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## Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

### PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, strength for those who seek You, hope for those who trust You, courage for those who rely on You, peace for those who follow You, wisdom for those who humble themselves before You, and power for those who seek to glorify You, we begin this new day filled with awesome responsibilities and soul-sized issues and confess our need for You. We are irresistibly drawn into Your presence by the magnetism of Your love and by the magnitude of challenges we face. Our desire to know Your will is motivated by Your greater desire to help us.

We thank You for the men and women of this Senate. Bless them as they debate the resolution on partial birth abortion and reflect on the issues of advise and consent. Help them maintain a spirit of unity as they press on with honest, open discussion and come to conclusions which are best for our Nation and the world. You are our Lord and Saviour. Amen.

### PLEDGE OF ALLEGIANCE

The Honorable TED STEVENS led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

### RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

### SCHEDULE

Mr. SANTORUM. Mr. President, this morning the Senate will resume the

consideration of S. 3, the partial-birth abortion bill. It is my understanding Senator MURRAY will be prepared to offer an amendment this morning. The majority leader has stated it is his intention to finish this important legislation by the end of the week. Senators wishing to offer amendments to the bill are encouraged to notify the managers of their intent so that we can proceed to an orderly consideration of the amendments.

Under the previous unanimous consent agreement, at 11 a.m. today the Senate will return to the Estrada nomination and begin a discussion of the Senate's constitutional role of advise and consent. Members are encouraged to come to the Chamber and engage in this discussion.

The Senate will recess from 12:30 to 2:15 p.m. for the weekly party lunches. Following the recess, the Senate will return to the consideration of the partial-birth abortion bill. Additional amendments are expected and therefore Members should anticipate votes this afternoon.

Lastly, I know it was the hope of the majority leader to schedule a vote on a district judge on the calendar this morning. We attempted to schedule a vote at 10:30. At this point, we understand there is an objection to setting the vote on Ralph Erickson of North Dakota to be a U.S. District Judge for the District of North Dakota. We will continue to and hopefully work out a unanimous consent agreement. We will certainly notify Members if we are able to succeed in getting a vote set sometime this morning.

I thank all Members.

The PRESIDING OFFICER (Ms. MURKOWSKI). The Senator from Nevada.

Mr. REID. Madam President, I say to the manager of this bill, first, we would probably agree to the judge without a vote. We are trying to run that through to find out if we would agree to the judge without a vote.

Secondly, we have a finite list of amendments we have received on our

side. We have run that through to the floor staff on the other side. We understand, rightfully so, that Senators want to see the amendments before there is an agreement on whether or not we could proceed on that basis. Yesterday, the majority leader indicated to me and to the Democratic leader that he wanted to finish this bill and could we cooperate and have a finite list of amendments. We have given those to the other side and we hope we can move forward.

We have had a number of our Members who wanted to bring up amendments that are not related to this issue and we have worked to have them not do that. So we hope those amendments could be reviewed quickly. We will try to get all the amendments. The first amendment Senator MURRAY is going to offer, we hope there will be agreement that there would be no second-degree amendments to that. She is not going to offer it until there is some agreement to that effect. We hope to get that done quickly. We just gave the Senator the amendment. We understand it needs to be looked over.

Mr. SANTORUM. Madam President, I have not had a chance to see the amendment, but I want to thank the leader for his willingness to come forward and offer a set of amendments. It is a reasonable set of amendments, from my estimation. We have not run a check on our side to see if there are any amendments. We are in the process of doing that. I do not anticipate very many, if any, at this point.

We are going to look at the amendment of Senator MURRAY. If we can, we will certainly allow that to go forward and we will certainly consider all the other amendments. If my colleagues can get them to us, I think we can fairly quickly enter into a unanimous consent agreement and move forward on this legislation. Again, I thank the Senator from Nevada for his willingness to come forward last night with this consent agreement. We are off to a

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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good start in trying to get this bill done in a timely fashion this week, and I thank him for his cooperation.

With respect to the issue of the judge, if the Senator does not want to vote on a judge, I know our leader would like to have a vote this morning, whether it is on a judge or some procedural matter. The leader would like to get Members to the Chamber for this discussion. Obviously, this is a vitally important discussion. The role of advise and consent is one of the more fundamental issues we have to grapple with, and our leader would like to have as much participation as possible. As is the case in the Senate, we usually cannot get that participation unless Senators are in the Chamber for a vote, and I think that is his intention.

We will certainly work with the other side in making sure we can come up with some accommodation that will suit both sides.

#### RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, the leadership time is reserved.

#### PARTIAL-BIRTH ABORTION BAN ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 3, which the clerk will report.

The legislative clerk read as follows:

A bill (S. 3) to prohibit the procedure commonly known as partial-birth abortion.

Mr. SANTORUM. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. SANTORUM. Madam President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SANTORUM. We resume today the debate on the issue of partial-birth abortion and Congress's fourth attempt to ban this procedure. There have been comments in the past about some of the descriptions we have used on the floor as to whether they are accurate, and whether some of the charts we have used are medically accurate charts. Some suggested in the line drawings we had depicted a fetus that was larger than the size of most in partial-birth abortions. In working with people from the medical community, we have come up with more realistic drawings to depict the actual procedure so people can graphically understand what is described in this legislation.

I will read the description in the legislation and show how the chart behind me is representative of this description. We have tightened the definition. The reason we tightened the definition was in response to the U.S. Supreme

Court that found the original definition in the congressional bill, which is similar to the one in Nebraska, was unduly vague, and, therefore, unconstitutional because of vagueness. We have taken further steps to make sure that by banning this procedure we are not including any other procedure that is used for late-trimester, late-term abortions.

Let me read what is in the legislation today and then go through the charts to show how that comports with this definition.

(1) the term "partial-birth abortion" means an abortion in which—

(A) the person performing the abortion deliberately and intentionally vaginally delivers a living fetus until, in the case of a head-first presentation, the entire fetal head is outside the body of the mother . . .

Now, I break from the text as to what partial-birth abortions are. The procedure itself is done in a breech position, but there may be a case—and this is what we are taking into consideration, here, the presentation—where the doctor makes a mistake and cannot deliver the child for some reason in a breech position. As I know, having been the father of seven children, you do not want a breech delivery. That is a dangerous delivery. That is not a normal delivery.

To authorize or to start a delivery in breech is a higher risk to the mother. No. 1. No. 2, for purposes of this procedure, that is what is described, that is what the doctors have said is the procedure which they would recommend. But there are always, in these medical procedures, chances for things to go awry so we take into consideration that if for some reason during this procedure the head is presented first, that will still be covered.

or, in the case of breech presentation, any part of the fetal trunk past the navel is outside the body of the mother for the purpose of performing an overt act that the person knows will kill the partially delivered living fetus; and

(B) performs the overt act, other than completion of delivery, that kills the partially delivered living fetus.

Now, that is the description that is in the bill.

Let me show graphically the process by which this abortion takes place. This is a picture of a fetus inside the mother's uterus with the gestational age of roughly 24 weeks. The gestational period is 40 weeks for normal development. We are talking about now 24 weeks, or better than halfway through the pregnancy. That is when the vast majority of partial-birth abortions occur. In fact, all of them occur after 20 weeks. Most of them occur 22, 24, 26 weeks.

In the first picture we see the baby in the womb, in the normal fetal position. What has happened before this procedure occurs is the mother presents herself to the abortionist. And the abortionist, in making a determination to do a partial-birth abortion, gives the mother a medication to dilate her cervix so this procedure can then be per-

formed. This dilation occurs over a 2-day period. The woman presents one day, the next day she stays at home, and the third day she arrives at the abortion clinic.

I use abortion clinic advisedly because this procedure is not performed in hospitals. It is not taught at medical schools. It is done solely at abortion clinics. The doctor who created this procedure testified that the reason he created this procedure was not because this was a better medical procedure for women. This was not designed for women's health. He said, and I am quoting him, he designed this procedure because other late-term abortions, when women presented themselves into his office, took 45 minutes. He could do this procedure in 15 minutes. Therefore, he said, he can do more abortions; he can make more money. So the person who designed this procedure, the person who put the medical literature out on this procedure is very clear as to why he designed this procedure. It is quick. It is easier for him. And he can make more money because he can do more abortions in a day.

So the mother, having been presented at the abortion clinic 2 days before, takes this drug. We heard from the Senator from Ohio yesterday, Senator DEWINE, of instances where mothers in Ohio, two cases—remember, this procedure was invented by a doctor in Ohio—two cases from a Dayton abortion clinic where the mother was given medicine to dilate her cervix and in two separate cases, because of the dilation, labor was induced and two different women delivered babies. One named Baby Hope lived 3½ hours and was not given medical treatment. I don't know all the facts as to why. Maybe it was an assessment that the child was too premature to live. The second baby, Baby Grace, was born and survived as a result of the live birth.

So we are talking about children here. This is very important. We are talking about this little infant here, this fetus, that would otherwise be born alive. The definition of the bill, I repeat one more time, of a baby delivered in a breech position:

. . . any part of the fetal trunk past the navel is outside the body of the mother for the purposes of performing an overt act that . . . will kill the . . . fetus.

You cannot kill a fetus if it is not alive. So this is a very important part of this definition. When the baby is delivered, the baby must be alive. If the baby is dead, we are not talking about an abortion because the baby is already dead. We are talking about a living fetus, living baby.

The first step now, the women presents herself, the cervix has been dilated, the physician goes in and grabs the baby's foot and begins to pull the baby into the birth canal in a breech position. Again, I repeat, no one preferably delivers a child in a breech position. It is just not what is medically recommended, but in this case we have the child being presented in a breech position.